

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA**

In re

TIMOTHY DOUGLAS HAYES,

Debtor.

Case No. 16-bk-11983-REF

Chapter Number: 7

315 BOWERY HOLDINGS, LLC and
CBGB FESTIVAL, LLC

Plaintiffs,

v.

TIMOTHY HAYES,

Defendant.

Adversary No. 16-186

STATUS REPORT

Pursuant to the Court's December 23, 2016 Order in this Adversary Proceeding (Adv. Dkt. No. 33), by which the Court stayed the Nondischargeability Action pending a final determination and judgment in the New York state court action *SW Productions, Inc. v. CBGB Festival, LLC*, No. 652990/2014 (Sup. Ct. N.Y. County 2014) (the "New York Action") Plaintiffs 315 Bowery Holdings, LLC and CBGB Festival, LLC (together, "CBGB"), through their undersigned counsel, hereby submit this Status Report outlining the status of the New York Action since the last status report dated June 22, 2018 (Adv. Dkt. No. 50).

Default Judgment Against Hayes

1. On August 1, 2018, CBGB filed an application for a default judgment against Debtor Timothy Hayes and his non-debtor company Productions New York City LLC ("Productions NYC") in the amount of \$554,731.40 in the New York Action (New York Action Dkt. No. 401). The default motion was unopposed. On October 5, 2018 the New York Trial Court granted CBGB's motion and directed CBGB to submit a proposed judgment and bill of costs. CBGB filed the requested documents and on November 29, 2018 the New York Court

issued an Amended Order directing the Clerk to enter judgment in favor of CBGB and against Debtor Timothy Hayes and his company Productions NYC (New York Action Dkt. No. 420).

2. On December 13, 2018, the Clerk entered judgment in favor of CBGB against Hayes and Productions NYC as directed by the New York Trial Court. The amount of the judgment is \$564,055.52, which includes certain costs and pre-judgment interest (New York Action Dkt. No. 423). CBGB has not attempted to enforce the judgment.

Stay Pending Appeal in New York Action

3. In the meantime, New York Action plaintiff SW Productions, Inc. (“SWP”) pursued its appeal of the New York Trial Court’s December 2017 order striking its Amended Complaint as a discovery sanction (the “Appeal”). As of November 9, 2018, the Appeal has been fully briefed and is scheduled to be heard during the New York Appellate Division, First Department’s (the “Appellate Court”) March 2019 term.

4. With certain exceptions, the New York Action has been stayed.

5. On October 30, 2018, the Appellate Court granted an application by SWP to stay trial court proceedings in the New York Action pending resolution of the appeal (2018 NY Slip Op 87338(U)) (the “Appellate Stay Order”). However, by its terms, the Appellate Stay Order does not apply to CBGB’s efforts to obtain and enforce a default judgment against Hayes and Productions NYC.

6. As a result of the Stay, no further action has been taken by the Parties in the New York Action, other than to have the default judgment entered against Hayes and Productions NYC, and the Parties await resolution of the Appeal.

Hayes Fails to Appear for Noticed Deposition

7. As the Court may recall, CBGB has made a number of attempts to schedule Mr. Hayes' deposition. After numerous cancellations, CBGB noticed a deposition of Mr. Hayes for September 7, 2018 in both this action and by subpoena in the New York Action. Given the past cancellations and concerns about the New York Action discovery deadlines (before the case was stayed), CBGB's counsel warned Hayes's counsel that CBGB would not be inclined to consent to any further adjournments of that deposition. On September 5, 2018, Hayes' counsel informed CBGB's counsel that the deposition would need to be rescheduled because they had a conflict on the scheduled date. CBGB did not consent to the cancellation and Mr. Hayes did not seek relief from this Court or the New York Court from the deposition notice or subpoena. CBGB's counsel asked Mr. Hayes' counsel to propose whatever days he could appear for his deposition. Mr. Hayes's counsel did not provide any dates.

8. Given the numerous failures by Hayes to appear for noticed depositions and at least one court-ordered conference, CBGB intends to seek appropriate remedies from this Court, including but not limited to, striking Hayes' answer and/or precluding Hayes from offering testimony in this action.

Respectfully Submitted: January 14, 2019

SHER TREMONTE, LLP

By: /s/ Kimo S. Peluso

Kimo S. Peluso (*pro hac vice*)

90 Broad St., 23rd Floor

New York, NY 10004

(212) 300-2442

*Attorneys for Plaintiffs 315 Bowery Holdings, LLC
and CBGB Festival, LLC*